

### **STATUS OF CLAIMS AND AMENDMENTS**

Claims 22-45 are pending. No claims have been amended, cancelled or added.

Claims 22-39 and 41-45 are provisionally rejected under the judicially created doctrine of obviousness type double patenting over claims 1-10; 10-21; 1-19 of US Patent Nos. 6,908,593; 6,521,182; and 6,261,519 respectively.

Claims 29-39 and 41-45 are also provisionally rejected under the judicially created doctrine of obviousness type double patenting over claims 22-36; 1-21; 1-21; and 1-21 of copending Application Nos. 10/330,790; 10/330,456; 10/121,425; and 10/121,636 respectively.

Claims 22-37 and 40-45 are rejected under 35 USC 102(e) as being anticipated by Naka et al (US Patents 6,001,307 or 6,180,062) or EP 0 803 288. As all of these references are related and claim priority from the same Japanese origin applications, they are treated as a single reference (hereinafter "Naka") for the purposes of this response.

Claims 38-39 are rejected under 35 USC 103(a) as being unpatentable over Naka.

### **REMARKS**

The following remarks are submitted to be fully responsive to the pending Office Action. It is further submitted that this response is timely filed within two months of the mailing date of the mailing date of the Office Action. In light of the following discussion, reconsideration of all of the grounds of rejection and allowance of all claims are respectfully requested.

#### **Obviousness Type Double Patenting**

Two provisional obviousness type double patenting rejections have been presented. With regard to the first of the provisional rejections, Applicants will submit an appropriate terminal disclaimer with respect to the claims of US Patent Nos. 6,908,593; 6,521,182; and 6,261,519 upon an indication of allowable subject matter by the Examiner in the present application.

With regard to the second of the provisional rejections, Applicants will address the rejection over the four pending applications once the rejection is no longer a provisional rejection or upon allowance of the present claims over the other rejections, whichever comes first.

### **Rejection Under 35 USC 102(e)**

Claims 22-39 and 40-45 have been rejected under 35 USC 102(e) over Naka. Applicants traverse this rejection and submit that Naka fails to teach all of the elements of the claimed invention.

The Examiner argues that Figure 21 of Naka teaches a fluid diagnostic device having multiple layers with the appropriate cut outs to a sample application port (4a), a first measurement area (3a), a first channel that traverses the length of the device, a compressible bladder (1), and a stop junction (3d) that prevents the sample from flowing into the bladder. He further argues that the stop junction (3d) meets the structural requirement of claim 22 that there be an abrupt change in cross sectional area from the measurement area to another channel section in communication with the bladder.

Applicants reiterate their comments regarding Naka and their position that Naka does not anticipate any of the claims. Applicants further submit that Naka does not anticipate the claims for the following additional reasons.

Figure 21 of Naka does not have a bypass channel. As a result, this Figure and its associated text cannot anticipate any of the claims because it does not have all of the required elements of the claims.

Nothing else in Naka anticipates the present claims. Naka fails to teach a device that includes a stop function and a bypass channel. Only Figures 3-5 and 7-8 of Naka show the use of a bypass channel. However, none of these figures, and none of the text associated with them, teach the use of a stop junction and a bypass channel. Consequently, Naka as a whole fails to disclose the combination of the required elements of the claims and therefore cannot anticipate any of the claims.

### **The Rejection Under 35 USC 103(a)**

Claims 38-39 have been rejected under 35 USC 103(a) over Naka. It is the Examiner's position that Naka teaches all of the elements of the claims except for the use of a polysulfone anisotropic filter. Applicants traverse this rejection.

As noted above, Naka does not teach the combination of elements required by the claims. Furthermore, nothing in Naka suggests why one should make the changes necessary to achieve the present claims. As a result, Naka not only fails to teach the use of a polysulfone anisotropic

filter, it fails to suggest a device that employs a stop function and a bypass channel. Consequently, even if one were to add a polysulfone anisotropic filter to the structure of Naka, one would not get the claimed invention. Accordingly, Naka fails to support the rejection of claims 38-39 under 35 USC 103(a).

**Conclusion**

In light of the foregoing arguments and amendment, it is submitted that all of the grounds of rejection have been overcome and that the present claims are now in condition for allowance. If the Examiner deems that any issue remains after consideration of this Response, he is invited to call the undersigned and expedite any remaining prosecution.

Respectfully Submitted,

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